

Bureau of Land Management, Interior

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1761, and administering, amending, assigning, renewing, and terminating them;

(2) Grants to Federal departments or agencies for transporting by pipeline and related facilities oil, natural gas, synthetic liquid or gaseous fuels, and any refined products produced from them; and

(3) Grants issued on or before October 21, 1976, under then existing statutory authority, unless application of these regulations would diminish or reduce any rights conferred by the original grant or the statute under which it was issued. Where there would be a diminishment or reduction in any right, the grant or statute applies.

(b) *What don't these regulations apply to?* The regulations in this part do not apply to:

(1) Federal Aid Highways, for which Federal Highway Administration procedures apply;

(2) Roads constructed or used according to reciprocal and cost share road use agreement under subpart 2812 of this chapter;

(3) Lands within designated wilderness areas, although BLM may authorize some uses under parts 2920 and 6300 of this chapter;

(4) Grants to holders other than Federal departments or agencies for transporting by pipeline and related facilities oil, natural gas, synthetic liquid or gaseous fuels, or any refined product produced from them (see part 2880 of this chapter);

(5) Public highways constructed under the authority of Revised Statute (R.S.) 2477 (43 U.S.C. 932, repealed October 21, 1976);

(6) Reservoirs, canals, and ditches constructed under the authority of R.S. 2339 and R.S. 2340 (43 U.S.C. 661, repealed in part, October 21, 1976); or

(7)(i) Any project or portion of a project that, prior to October 24, 1992, was licensed under, or granted an exemption from, part I of the Federal Power Act (FPA) (16 U.S.C. 791a et seq.) which:

(A) Is located on lands subject to a reservation under section 24 (16 U.S.C. 818) of the FPA;

(B) Did not receive a grant under Title V of the Federal Land Policy and

Management Act (FLPMA) before October 24, 1992; and

(C) Includes continued operation of such project (license renewal) under section 15 (16 U.S.C. 808) of the FPA;

(ii) Paragraph (b)(7)(i) of this section does not apply to any additional public lands the project uses that are not subject to the reservation in paragraph (b)(7)(i)(A) of this section.

§ 2801.8 Severability.

If a court holds any provisions of the regulations in this part or their applicability to any person or circumstances invalid, the remainder of these rules and their applicability to other people or circumstances will not be affected.

§ 2801.9 When do I need a grant?

(a) You must have a grant under this part when you plan to use public lands for systems or facilities over, under, on, or through public lands. These include, but are not limited to:

(1) Reservoirs, canals, ditches, flumes, laterals, pipelines, tunnels, and other systems which impound, store, transport, or distribute water;

(2) Pipelines and other systems for transporting or distributing liquids and gases, other than water and other than oil, natural gas, synthetic liquid or gaseous fuels, or any refined products from them, or for storage and terminal facilities used in connection with them;

(3) Pipelines, slurry and emulsion systems, and conveyor belts for transporting and distributing solid materials and facilities for storing such materials in connection with them;

(4) Systems for generating, transmitting, and distributing electricity;

(5) Systems for transmitting or receiving electronic signals and other means of communication;

(6) Transportation systems, such as roads, trails, highways, railroads, canals, tunnels, tramways, airways, and livestock driveways; and

(7) Such other necessary transportation or other systems or facilities which are in the public interest and which require rights-of-way.

(b) If you apply for a right-of-way grant for generating, transmitting, and distributing electricity, you must also

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comply with the applicable requirements of the Federal Energy Regulatory Commission under the Federal Power Act of 1935, 16 U.S.C. 791a *et seq.*, and 18 CFR chapter I.

(c) See part 2880 of this chapter for information about authorizations BLM issues under the Mineral Leasing Act for transporting oil and gas resources.

§ 2801.10 How do I appeal a BLM decision issued under the regulations in this part?

(a) You may appeal a BLM decision issued under the regulations in this part in accordance with part 4 of this title.

(b) All BLM decisions under this part remain in effect pending appeal unless the Secretary of the Interior rules otherwise, or as noted in this part. You may petition for a stay of a BLM decision under this part with the Office of Hearings and Appeals, Department of the Interior. Unless otherwise noted in this part, BLM will take no action on your application while your appeal is pending.

Subpart 2802—Lands Available for FLPMA Grants

§ 2802.10 What lands are available for grants?

(a) In its discretion, BLM may grant rights-of-way on any lands under its jurisdiction except when:

(1) A statute, regulation, or public land order specifically excludes rights-of-way;

(2) The lands are specifically segregated or withdrawn from right-of-way uses; or

(3) BLM identifies areas in its land use plans or in the analysis of an application as inappropriate for right-of-way uses.

(b) BLM may require common use of a right-of-way and may require, to the extent practical, location of new rights-of-way within existing or designated right-of-way corridors (see § 2802.11 of this subpart). Safety and other considerations may limit the extent to which you may share a right-of-way. BLM will designate right-of-way corridors through land use plan decisions.

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(c) You should contact the BLM office nearest the lands you seek to use to:

(1) Determine whether or not the land you want to use is available for that use; and

(2) Begin discussions about any application you may need to file.

§ 2802.11 How does BLM designate corridors?

(a) BLM may determine the locations and boundaries of right-of-way corridors during the land-use planning process described in part 1600 of this chapter. During this process BLM coordinates with other Federal agencies, state, local, and tribal governments, and the public to identify resource-related issues, concerns, and needs. The process results in a resource management plan or plan amendment, which addresses to what extent you may use public lands and resources for specific purposes.

(b) When determining which lands may be suitable for right-of-way corridors, the factors BLM considers include, but are not limited to, the following:

(1) Federal, state, and local land use plans, and applicable Federal, state, local, and tribal laws;

(2) Environmental impacts on cultural resources and natural resources, including air, water, soil, fish, wildlife, and vegetation;

(3) Physical effects and constraints on corridor placement due to geology, hydrology, meteorology, soil, or land forms;

(4) Costs of construction, operation, and maintenance and costs of modifying or relocating existing facilities in a proposed right-of-way corridor (i.e., the economic efficiency of placing a right-of-way within a proposed corridor);

(5) Risks to national security;

(6) Potential health and safety hazards imposed on the public by facilities or activities located within the proposed right-of-way corridor;

(7) Social and economic impacts of the right-of-way corridor on public land users, adjacent landowners, and other groups or individuals;